THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 9382 of 2001

Between:

V. Ashok, S/o. Narayana,
R/o. H.No.19-2-184/84/A, Bhadurpura,
Hyderabad.

..... PETITIONER

AND

1 The Secretary Regional Transport Authority,
South Zone, Hyderabad AND OTHERS

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 9382 of 2001

Oral Order:

The petitioner is the owner of goods vehicle bearing registration No. MTL 5250. There is no dispute that the petitioner paid tax up to 30.6.1999. On 29.6.1999, the petitioner has filed a stoppage intimation along with RC book stating that the vehicle was kept for repairs at M/s. Vishnu Chemicals Private Limited, Gadda Potharam, Jinnaram mandal, Medak district from 28.6.1999 onwards to carry out certain repairs. According to the petitioner, the repairs were completed within a period of six months. The respondents having received the intimation of stoppage, referred the same to the Regional Transport Officer, Medak at Sangareddy to make an enquiry into the genuineness of the intimation of stoppage.

In the meanwhile, on 21.4.2001, the Motor Vehicle Inspector, Medchel has stopped and checked the said vehicle while it was proceeding from Kazipally to Gaddi

Maisam for loading and unloading of sand of M/s. Vishnu Chemical Factory and reported that there is no proof of payment of tax, fitness certificate, permit, insurance certificate, driving licence etc., The vehicle was accordingly seized under check report No. 352517 dated 21.4.2001.

Thereafter, the Assistant Secretary, RTA, South Zone, Hyderabad issued show cause notice dated 26.4.2001 requiring the petitioner to submit his reply as to why Rs.50,063/- should not be collected from him towards the tax and penalty. In the show cause notice it is inter alia alleged that the petitioner did not produce the RC, proof of payment of tax, fitness certificate, permit, insurance certificate, driving licence etc. It is alleged that the record discloses that the petitioner paid tax upto 30.6.1999 and thereafter filed the stoppage intimation on 29.6.1999 informing that the vehicle was kept for repairs etc. But, it was clearly evident that the vehicle was kept for use from 1.7.1999 onwards and the stoppage intimation is a belated one. It is under those circumstances, the petitioner was put on notice as to why the following tax and penalty should not be collected from him.

Period Tax Penalty

Q.E.30.09.1999 2225 4450

Q.E.31.12.1999 2225 4450

Q.E.31.03.2000 2225 4450

Y.E.30.06.2001 8900 17800

Q.E.30.06.2001 2225 1113

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17800 32263 = 50063

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The petitioner submitted a detailed reply to the show cause notice reporting that he got issued the stoppage notice on 29.6.1999 duly intimating the authority that the vehicle was stopped w.e.f. 28.6.1999 and that the vehicle was not plied all these

years. He denied the allegation that the vehicle was used for loading and unloading of sand of M/s.Vishnu Chemicals Private Limited. He expressed his willingness to pay the quarterly tax from 31.3.2001 to 30.6.2001. The sum and substance of the objection to the show cause notice is that he is not liable to pay the arrears of tax from 30.6.1999 since the vehicle was not in use.

The authority having made a detailed enquiry into the matter found the explanation to be unsatisfactory as it was only an afterthought just to avoid the payment of tax. It is clearly found that the stoppage intimation is a false one. If the vehicle was actually kept for repairs, as contended, the same would not be in a public place for loading and unloading of sand. The authority accordingly confirmed the contents of the show cause notice and required the petitioner to pay the tax and penalty.

In this writ petition, Sri Vijayasen Reddy, learned counsel for the petitioner submits that the authority is not entitled to collect any arrears of tax for the period from 30.9.1999 and so also no penalty can be levied for the said period. It was submitted that at the most the petitioner is liable to pay the tax for the quarter ending 31.3.2001. This is the only submission made by the learned counsel for the petitioner.

The submission, in my considered opinion, is mis- conceived. The authority, as a matter of fact, found that there is no evidence that the petitioner stopped plying of the vehicle since 28.6.1999. There was no documentary evidence made available to that effect. The contention that the vehicle was seized when it was proceeding to workshop for mechanical check up is totally unacceptable since it was found to be loaded with sand to be unloaded at Vishnu Chemicals. At any rate, such question of fact cannot be gone into by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The authority having considered the explanation submitted by the petitioner found no merit and as a matter of fact found that the stoppage intimation was a false one. In such view of the matter, no relief could be granted to the petitioner.

The writ petition fails and shall accordingly stand dismissed without any order as to costs.

B.SUDERSHAN REDDY,J

DT: 19.10.2005

msv